



**COMMONWEALTH of VIRGINIA**  
*Office of the Attorney General*  
*Richmond 23219*

**Judith Williams Jagdmann**  
Attorney General

900 East Main Street  
Richmond, Virginia 23219  
804-786-2071  
804-371-8947 TDD

**MEMORANDUM**

TO: O. Gene Dishner, Director  
Department of Mines, Minerals and Energy (“Department”)

FROM: Sharon M.B. Pigeon  
Assistant Attorney General

DATE: March 14, 2005

RE: Emergency Regulation and Notice of Intended Regulatory Action (NOIRA)  
4 VAC 25-130-816.11 and 4 VAC 25-130-816.64 (“Existing Regulations”)

---

The Office of the Attorney General was advised that the Department has proposed to amend the requirements for permit boundary signs and blasting near residences and occupied buildings on coal mines. Existing Regulations are being amended pursuant to the directive to the Department of Mines, Minerals and Energy (DMME) to promulgate these regulatory amendments on an emergency basis in accordance with the third enactment clause of Chapter 3 of the 2005 Virginia Acts of Assembly (HB 2573). DMME has no alternative to this action that would otherwise satisfy this mandate.

You have asked that I provide you with a determination of whether statutory authority exists to amend the Existing Regulations and to promulgate in their stead the attached proposed regulations 4 VAC 25-130-816.11 and 4 VAC 25-130-816.64 (“Proposed Regulations”). After a review of the Proposed Regulations, I have determined that the regulations do fall within the Department’s powers and mandate to regulate coal surface mining operations and to promulgate regulations for that purpose. The Proposed Regulations are approved as to form as currently written.

I have reached this conclusion in reliance on the general authority to promulgate regulations given to the Department through Va. Code §§ 45.1-161.3, 45.1-228, 45.1-230, and 45.1-242. Additional, more specific support for this action can be found in §§ 2.2-4006 and 2.2-4011 of the Virginia Code, 1952, as amended, which exempts agency orders and regulations from the Virginia Register Act, §§ 2.2-4100 *et seq.*, as the Proposed Regulations are emergency regulations necessary for compliance with, and pursuant to requirements of, a change in State statutory law and do not differ materially from their federal counterparts.

**The purpose of this communication is to provide legal advice, not policy advice. To the extent that this communication may advise you that certain action is lawful, the decision whether to take such action remains a policy decision within the discretion of your agency or board and this communication should not be construed as a comment for or against the merits of such action.**